IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3062 OF 1997

Smt. Dr.Amita Mohan alanwar & Anr. .. Petitioners.

Vs

Smt Zulekha Gulam Nabi Patel & ors. .. Respondents

Mr G.V.Nagarsheth, for the petitioners.

None for the respondents.

CORAM : D.B.BHOSALE,J.

DATE : 13.12.2005.

PC:

1. Heard the learned counsel for the petitioner. None appears for the respondents.

2. This petition is directed against the order dated 20.2.1997, by which the petitioner's application Exhibit-39 was rejected. Application Exhibit-39 was filed by the petitioners under Order 1 rule 10 of the Code of Civil Procedure, contending that the petitioners are in possession of the suit property as tenants and, therefore, they are necessary to be added as party defendants in the suit. The suit is instituted by respondent nos 1 to 4 against respondent no.5 for removal of encroachment. The petitioners claim that they were inducted in the suit property as tenants by

respondent no.5. The allegations made by the parties against each other are yet to be proved by leading evidence. At this stage, it would not be proper to say that respondent no.5 is encroacher. It appears that respondent no.5 is not contesting the suit and, therefore, the petitioners have apprehension that if the suit is decreed, that will affect their rights in the property very badly. Mr Nagarsheth, learned counsel for the petitioners, submits that since respondent no.5 is not contesting the suit, it would be possible for the petitioners, if they are added as party defendants in the suit, to establish that their induction in the suit property as a tenant was proper and legal. Without expressing any opinion on the merits of the case and looking to the overall facts and circumstances of the case, in my opinion, the petitioners would be necessary party in the suit for complete and final adjudication of the suit. This will also avoid multiplicity of the proceedings. In the circumstances, the impugned order is set aside. Rule is made absolute in terms of prayer clause (a). I direct the respondent-plaintiff to add the petitioners as party defendants in the suit within four weeks from the date of receipt of this order. The plaintiff would be at liberty to make consequential amendment of the plaint. The trial Court to proceed

with the hearing of the suit and decide the same expeditiously. (D.B.Bhosale,J.)